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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 225

IN THE MATTER OF MORTON DAVID BLUESTONE,
Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA AND BRIEF IN SUPPORT THEREOF.

MORTON DAVID BLUESTONE,
Pro Se.

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Summary Statement of Matter Involved.

The principal facts in petitioner's case (which can be found stated in greater detail in his petition to the Supreme Court of Pennsylvania forming a part of the attached certified transcript of record in this case) are as follows:

Morton David Bluestone, the above-named petitioner, having applied on April 28, 1938, to the Pennsylvania Board of Law Examiners for registration as a law student in Allegheny County, Pennsylvania, was referred to the Allegheny County Board of Law Examiners for completion of such registration. On September 1, 1938, petitioner was interviewed by a committee of two members of the Allegheny County Board of Law Examiners for this purpose; and,

inter alia, petitioner was asked, "Do you believe in the [United States] Constitution?" Petitioner replied, "No." Petitioner was then asked whether or not he would take an oath to support the Constitution, and he answered in the affirmative, stating that he had already taken such an oath, without mental reservation, at the time he entered his employment with the United States Government. (Petitioner was, at that time, and still is, in the employ of the United States Department of the Interior, Bureau of Mines, Pittsburgh, Pa., having obtained such employment through examination and certification by the United States Civil Service Commission.)

After lapse of several months and numerous inquiries by petitioner of the Allegheny County Board of Law Examiners concerning the status of his application for registration, petitioner was requested to appear at a meeting of the Board held April 6, 1939. Petitioner so appeared and was questioned by various members of the Board. The questions centered around three principal subjects, namely:

1. Petitioner's activity in "voluntary associations" during the period of his undergraduate studies at the University of Pittsburgh; and whether or not such organizations were Communistic.

2. Reconciliation of petitioner's non-"belief" in the Constitution with his ability to take an oath to support it.

3. Reasons for petitioner's non-"belief" in the United States Constitution, such as his opinions of what constituted the Constitution's inadequacies, and his opinions concerning desired changes in the governmental structure of the United States.

Petitioner answered questions of the first type as fully as his recollection permitted, and raised objection to none of them, although during the course of questioning, and in

a letter to the Board, and at a later appearance before the Board, he stated his opinion that such questions were legally irrelevant.

Petitioner answered questions of the second type by summarizing a statement he had made to the Board's committee when he was interviewed on September 1, 1938. The statement, of which the Board was already informed through a transcript of stenographic notes taken at the September 1, 1938, interview, was substantially that petitioner thought himself capable of taking an oath to support the Constitution on the same basis as elected legislators who were committed to a program which included amendment of the Constitution by use of the amending process prescribed therein.

Concerning questions of the third type, petitioner explained that by his negative answer to the question "Do you believe in the Constitution?" he meant that he did not consider the Constitution an adequate instrument of government at the present time. Petitioner refused to answer, when originally asked, such questions as "What in your opinion is wrong with the Constitution?" stating that he thought such questions were of a political nature and that his political opinions were outside of the County Board's scope of authority in an inquiry by the Board into his character and reputation as an applicant for registration as a law student. The presiding officer of the Board, however, made no decision, either affirmative or negative, on petitioner's objection, and made no effort to interpose against such questions when they were repeatedly put, and petitioner answered (in as general and non-political manner as he could conceive under the circumstances) numerous questions concerning his opinions on the United States Government and Constitution, what petitioner considered their inadequacies, and what changes in them petitioner would favor.

No decision concerning petitioner's application was made at the April 6, 1939, hearing; and after several attempts by petitioner to obtain a definite decision, he finally requested and obtained the Board's permission to appear at the Board's November 9, 1939, meeting and make a statement he thought would aid the Board in rendering a decision upon his application. Petitioner read to the Board a 1937 decision of the Supreme Court of Pennsylvania (333 Pa. 593), in which that court stated that a county board of law examiners would not be required to divulge its reasons for refusing to register a law student. Petitioner pointed out that this decision permitted the Board to decide upon his application without further delay; however, he went on to state that the opinion of the Pennsylvania Supreme Court said in effect that county boards were not bound by the Fourteenth Amendment of the United States Constitution to grant due process to those appearing before such boards. Petitioner contended that such a premise was incorrect.

Petitioner went on, at this meeting, to review what appeared to be the questions at issue concerning his application; to summarize his objections to the Board's method of procedure at the April 6, 1939, hearing; and to point out certain remarks made by Board members at that hearing which would tend to mislead anyone reading the record of the proceedings. Petitioner also reiterated his willingness to answer any relevant questions the Board might wish to ask, within the scope of its authority; but no questions were raised.

On November 10, 1939, the Secretary of the Allegheny County Board of Law Examiners informed petitioner by letter that the Board had rejected his application for registration as a law student and had forwarded a negative recommendation to the State Board of Law Examiners. No reasons for the rejection and negative recommendation

were then, nor have they since been, given or communicated to petitioner. On November 15, 1939, petitioner wrote to the State Board of Law Examiners requesting a review of the Allegheny County Board's decision; this in accordance with Rule 9 of the Pennsylvania Supreme Court having reference to the admission to the bar. Copies of all correspondence, testimony, etc., relevant to petitioner's application and in his possession, were forwarded to the State Board on November 24, 1939.

Petitioner was advised by letter dated December 8, 1939, from the Secretary of the State Board of Law Examiners that the State Board had, at its meeting of December 7, 1939, affirmed the action of the Allegheny County Board in refusing to recommend petitioner for registration as a law student. No reasons for the State Board's decision were, nor have they since been, communicated to petitioner.

Petitioner, on December 9, 1939, advised the State Board by letter of his intention to appeal from its decision to the Pennsylvania Supreme Court; and in view of no outline of procedure appearing in that court's rules which provide for such an appeal, and the fact that State Board rulings require such an appeal to be filed in duplicate with the Board, petitioner asked, in his letter, for necessary instructions for properly appealing the Board's decision. On December 11, 1939, the Secretary of the State Board replied by letter to petitioner stating that the petition should set forth "(1) the reasons for granting your appeal, and (2) praying that the Court will allow the same." No other requirements were indicated; and petitioner mentions these facts solely for the purpose of explaining why, when on December 25, 1939, he forwarded his petition (certified copy of which is annexed hereto as part of the record) in duplicate to the State Board to be filed with the Prothonotary of the Pennsylvania Supreme Court, no transcript of

the proceedings of the Allegheny County Board, or other record, in the matter of petitioner's application for registration as a law student, accompanied said petition. Petitioner is ready to furnish any and all relevant parts of the actual record of his case in his possession.

After receiving an acknowledgment of receipt by the State Board of the copies of his petition, petitioner heard nothing further until he received from the Prothonotary of the Eastern District of the Supreme Court of Pennsylvania a letter quoting the order of that court dated April 9, 1940 (a certified copy of which is annexed hereto as part of the record), dismissing petitioner's appeal. Petitioner's contentions as to grounds for setting aside the decisions of the County and State Boards (see R. 5-6) were not discussed in any way by the Supreme Court of Pennsylvania in its dismissal of the petition.

This is a petition for writ of certiorari to review the decree of the Supreme Court of Pennsylvania (Sec. 237, Judicial Code, as amended; Sec. 8(a), Act of February 13, 1925, 43 Stat. 937,940).

Questions Presented.

The four following questions to which petitioner seeks an answer, and which he sought to have answered by raising the four contentions above mentioned (R. 5-6) in his petition to the Supreme Court of Pennsylvania, have been raised in the proceedings below, but not answered. Since at no time were reasons given by the Allegheny County or State Board of Law Examiners for the refusal to register petitioner, he is uncertain as to which, if any, of the reasons indicated in the first three questions were the grounds for the refusal relied upon by the Allegheny County Board. Since, however, the points involved were subjects upon which petitioner was questioned at length by said County Board, and since presentation of the fourth question alone

would in all probability result in the necessity of later resorting further to judicial channels to settle issues already apparent on the face of the record and disposable of at this time, petitioner presents as questions the following:

1. May a county or state board of law examiners, without violating the due process clause of the Fourteenth Amendment of the United States Constitution, refuse to register an otherwise-qualified applicant for the study of law for the reason that he has expressed a disbelief in the current adequacy of that Constitution as an instrument of government?

2. May such a board, without violating the aforesaid due process clause, refuse such registration on the ground that the applicant therefor is not capable of taking, conscientiously, in good faith, and without mental reservation, the lawyer's oath to support the Constitution, particularly when

(a) Such board has not challenged as a fact the applicant's previous taking of an oath to support the Constitution when he entered upon employment with the federal government; and when

(b) Such board has neither alleged nor shown that the applicant ever violated the oath to support the Constitution which said board has acknowledged he took.

3. May such a board, without violating aforesaid due process clause, refuse such registration for the reason that the applicant therefor was once a member of an organization of which, at the time of applicant's membership, a minority of members were Communists, particularly when it does not appear either

(a) That the organization was either Communist-controlled or engaged in illegal activities; or

(b) That the applicant himself was or is a Communist or ever engaged in any illegal activities, either as an individual or as a member of such organization.

4. Can such a board, under authority of a state supreme court decision, fail to disclose to an applicant its reasons for refusing him registration, without violating aforesaid due process clause?

Reasons Relied Upon for the Allowance of the Writ.

The questions presented in this case are substantially (a) whether a quasi-judicial state administrative agency may exclude persons from practice of a profession or occupation because such persons hold unusual or even unpopular political opinions which are not illegal; and (b) whether such an agency is required to disclose reasons for such exclusions. The increasing degree of governmental regulation of occupations and professions renders increasingly important the need for clearer demarcation of the extent of regulatory powers of such agencies, in order that personal rights of liberty of thought, conscience, and expression may be adequately protected and the exercise of governmental authority be guided by law rather than personal prejudice, by reason instead of arbitrary form. The questions are also of pressing personal importance to the petitioner: he is expending his efforts toward completion of his law studies by June, 1942; unless these questions are decided favorably to petitioner before that time, he will not be granted admission to the examinations for admission to the bar in his State.

The questions here presented have not heretofore been passed upon by this Court; but while the first three may involve relatively new legal points, it is submitted that the ruling of the Supreme Court of Pennsylvania, in dismissing petitioner's appeal to that court and in effect denying

the responsibility of the County Board of Law Examiners to divulge reasons for its decisions, is so flagrant a failure to require that board to grant due process of law that no American governmental agency or court has ever suggested such procedure to be constitutional.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this honorable Court directed to the Supreme Court of Pennsylvania; that the order of that court be reversed; and that your petitioner have such other and further relief as to this honorable Court may see meet and just.

MORTON DAVID BLUESTONE,
Petitioner.